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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 HARRY J. WILLIBY,

No. C-06-07385 EDL

10 Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECUSE**

11 v.

12 CITY OF OAKLAND, et al.,

13 Defendants.  
14 \_\_\_\_\_/

15 Plaintiff Harry Williby, who is proceeding pro se in this matter, filed a motion seeking this  
16 Court's recusal pursuant to 28 U.S.C. § 455 on the ground that this Court has a personal bias or  
17 prejudice against him. This matter has been fully briefed and is appropriate for decision without oral  
18 argument.

19 "In analyzing § 455(a) disqualification motions, we employ an objective test: whether a  
20 reasonable person with knowledge of all the facts would conclude that the judge's impartiality might  
21 reasonably be questioned." Clemens v. U.S. Dist. Court for the Central Dist. of Cal., 428 F.3d 1175,  
22 1178 (9th Cir. 2005) (citing Herrington v. County of Sonoma, 834 F.2d 1488, 1502 (9th Cir.1987)  
23 (quoting United States v. Nelson, 718 F.2d 315, 321 (9th Cir.1983)) (internal quotations omitted).  
24 "“Section 455(a) asks whether a reasonable person perceives a significant risk that the judge will  
25 resolve the case on a basis other than the merits.”” Clemens, 428 F.3d at 1178 (quoting In re Mason,  
26 916 F.2d 384, 385 (7th Cir.1990)). The “reasonable person” in this context means a  
27 “well-informed, thoughtful observer,” as opposed to a “hypersensitive or unduly suspicious  
28 person.”” Clemens, 428 F.3d at 1178 (quoting Mason, 916 F.2d at 386).

In general, actions taken by a judge as part of her official duties are insufficient to call the

1 judge's impartiality into question. See Clemens, 428 F.3d at 1178 ("In determining whether  
2 disqualification is warranted under § 455(a), we also apply the general rule that questions about a  
3 judge's impartiality must stem from 'extrajudicial' factors, ... that is, from sources other than the  
4 judicial proceeding at hand.") (citation omitted). Under those circumstances, the standard for  
5 recusal is high: "In the instance where the partiality develops during the course of the proceedings, it  
6 can be the basis of recusal only when the judge displays a deep-seated and unequivocal antagonism  
7 that would render fair judgment impossible." See F.J. Hanshaw Enters., Inc. v. Emerald River  
8 Devel., Inc., 244 F.3d 1128, 1145 (9th Cir.2001).

9 Plaintiff argues that this Court exhibited bias against him at the July 31, 2007 hearing on his  
10 motion to compel and motion for sanctions by: (1) not allowing him as much time to argue his  
11 motions as counsel in other matters were allowed; (2) denying his motion to compel because he  
12 would not communicate by telephone with defense counsel; (3) stating that the Court would not  
13 consider the prior bad acts of the Oakland police department; and (4) granting deference to defense  
14 counsel by calling her an officer of the court. Under the objective standard as stated in Clemons,  
15 this conduct does not demonstrate that this Court should recuse itself.

16 Specifically, the Court heard argument from both parties on Plaintiff's motion to compel, and  
17 there is no requirement that the Court give each case on its calendar the same amount of time for  
18 oral argument. Recusal based on not giving the parties more time for oral argument is not  
19 appropriate. See Liteky v. U.S., 510 U.S. 540, 556 (1994) ("A judge's ordinary efforts at courtroom  
20 administration-even a stern and short-tempered judge's ordinary efforts at courtroom  
21 administration-remain immune [from bias or prejudice challenges].").

22 In addition, the Court denied Plaintiff's motions in part because of his failure to meet and  
23 confer with defense counsel before filing as required by Local Rule 37-1(a). Plaintiff reiterated at  
24 the hearing that he believes that if communication with counsel does not occur in writing, the  
25 communication did not occur. This is contrary to Local Rule 1(n), which requires that meet and  
26 confer sessions must take place by telephone or in person; communication in writing is specifically  
27 insufficient to satisfy the meet and confer requirement. Moreover, a judicial ruling such as the  
28 denial of Plaintiff's motion alone is not a valid basis for recusal. See Liteky, 510 U.S. at 556 ("... .

1 [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. [citation  
2 omitted]. In and of themselves (i.e., apart from surrounding comments or accompanying opinion),  
3 they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest  
4 circumstances evidence the degree of favoritism or antagonism required (as discussed below) when  
5 no extrajudicial source is involved.”).

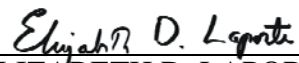
6 Further, at the hearing, the Court did not make any ruling regarding the consideration of prior  
7 bad acts of the Oakland police department. Even if it did, such a judicial ruling alone would be  
8 insufficient to support recusal. See Liteky, 510 U.S. at 556.

9 Finally, in ordering Plaintiff to reveal the name of the Doe Defendant that he had been  
10 withholding from defense counsel, the Court referred to defense counsel as an officer of the court to  
11 the extent that she had an obligation to be truthful and ethical. That well-known moniker does not  
12 reflect any particular deference to defense counsel.

13 Plaintiff has failed to establish that a reasonable person would question this Court’s  
14 impartiality or to show that this Court harbors a “deep-seated and unequivocal antagonism that  
15 would render fair judgment impossible.” See F.J. Hanshaw Enters., 244 F.3d at 1145. Accordingly,  
16 Plaintiff’s motion to recuse is denied.

17 **IT IS SO ORDERED.**

18 Dated: October 3, 2007

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20 ELIZABETH D. LAPORTE  
21 United States Magistrate Judge  
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